IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 32697 of 2004(P)

PETITIONER:

K. REGHUNANDINY, W/O. GOPIDAS,
SAYOOJYAM, SANTHI NAGAR, MARAOTTICHODU,
EDAPPALLY P.O., KOCHI-24, (RETD.EXECUTIVE
ENGINEER, K.S.H.B., PANAMPILLY NAGAR, KOCHI-36).

BY ADV. SRI.B.RADHAKRISHNA PILLAI
SMT.S.AMBIKA DEVI
SMT.BABY JOSE
SRI.R.JYOTHIKRISHNAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE KERALA STATE HOUSING BOARD
REPRESENTED BY ITS SECRETARY, SANTHI NAGAR,
THIRUVANANTHAPURAM-1.

3. REGIONAL ENGINEER, REGIONAL OFFICE,
THE KERALA STATE HOUSING BOARD,
PANAMPILLY NAGAR, KOCHI-36.

R1 BY GOVERNMENT PLEADER SHRI. BIJOY CHANDRAN
R2 & 3 SRI.A.JAYASANKAR, SC KSHB, TVM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No. 32697 OF 2004 P
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Dated this the 26th February, 2006

J U D G M E N T

The petitioner retired from the service of the 2nd respondent-Kerala State Housing Board while working as the Executive Engineer. She has approached this Court for the grant of the following reliefs:

> "i) To issue a writ of mandamus, any other appropriate writ, order or direction, directing the 2nd respondent to sanction and pay monthly pension and all other pensionary benefits due to the petitioner including arrears of pension w.e.f. 1-11-2003, commuted value of pension, DCRG, and leave surrender and also the last month's pay along with interest at 18% per annum wef 1-11-2003.
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> ii) To issue a writ of mandamus any other appropriate writ, order or direction, directing the 2nd respondent to disburse the Provident Fund due to the petitioner with interest at 18% from the date of retirement (ie) 31-10-2003) to the date of payment forthwith.
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> iii) To issue any other writ, order or direction which this Hon'ble Court deems fit in the nature and circumstances of the case."

2. The date of retirement of the petitioner is 31-10-2003. She had to her credit 22 years of service as on 31-10-2003. Though pension and commuted value of pension, has been paid to her, D.C.R.G., surrender

leave salary and last month's pay have not been disbursed. This is the subsisting grievance of the petitioner as on today.

3. The respondents have filed counter affidavit. It is stated in the counter affidavit that certain liability was outstanding against the petitioner relating to the works entrusted to her in the Ernakulam Division. The department was probing into the cause for the pecuniary loss sustained by the Housing Board which on a preliminary investigation found to come to a tune of Rs. 1,13,639/-. It is stated in paragraph 6 of the counter affidavit that the Vigilance and Anti-Corruption Bureau has conducted an enquiry in connection with the pilferage of cement from Government Cement Depot, Panampilly Nagar, Kochi and recommended to initiate Departmental action against the petitioner. According to the respondents, the petitioner's share of liability was fixed by the Vigilance Wing of the Board. But the counter affidavit would categorically show that final quantification of the liability could not be made for want of enquiry into all aspects of the

matter and that even today quantification proceedings have not been finalised. It does not appear that the petitioner has been issued with any notice proposing to fix the final liability on her. That fact is also evident from the counter affidavit itself. Of course, the counter affidavit was sworn to on 4-1-2005. The petitioner has filed a reply affidavit controverting the allegations made in the counter affidavit against her. Though one more year has elapsed, it appears that the liability has not so far been quantified.

4. The only question for consideration as far as the claim for disbursement of D.C.R.G. is concerned is whether the respondents have got the legal authority to withhold D.C.R.G. from the terminal benefits due to the petitioner who retired as early as on 31-10-2003. The power to withhold or recover amount from the pensionary benefits due to a retired employee is traceable to Rule 3 of Part III of Kerala Service Rules. The inbuilt safeguard against arbitrary action against the retired employees in the matter of withholding or recovering pensionary benefits due to such employees is one

relating to the fixation of a time limit for completing action in respect of such withholding or recovering and due notice to the employee or pensioner concerned before final quantification of the liability. The outer time limit is three years. That period is already over. Therefore, no further action can be taken under the provisions of Rule 3, Part III of K.S.Rs. to withhold or recover the D.C.R.G. due to the petitioner. The final quantification is yet to take place. The petitioner is entitled to succeed on the above ground.

5. I am of the view that no more enquiry is necessary in this matter to grant reliefs to the petitioner as far as the direction sought for, to disburse DCRG is concerned. I therefore direct that the respondents shall disburse the D.C.R.G. due to the petitioner at the earliest. At any rate, the amount shall be paid within three weeks from the date of receipt of a copy of the judgment.

6. The remaining claims include (i) the pay and allowances for the last month, and terminal surrender

leave salary. Counsel for the respondents rightly submits that those amounts will be paid without further delay. Hence, there shall be an order that amounts on account of terminal surrender leave salary and the last month's pay shall be disbursed without further delay, at any rate, along with the D.C.R.G. due to be paid as directed above.

7. The next contention relates to the non-payment of Provident Fund. Though the non-payment of P.F. was a grievance highlighted in the writ petition, it is submitted by counsel on either side that during the pendency of this writ petition the P.F. amount upto 7-1-2005 has been disbursed to the petitioner. Therefore, there was delay on the part of the respondents in disbursing the P.F. amount. It is not known whether at the time of final payment, interest upto 7-1-2005 was calculated. If the amount was paid without interest, for whatever period interest has not been calculated, the same shall be done and the amount due to the petitioner, if any , towards interest paid to her immediately. Ordered accordingly.

8. The last contention relates to interest for the delayed payment of terminal benefits, namely, D.C.R.G., commuted value of pension as also regular pension. According to the petitioner, there was lethargy and culpable delay on the part of the respondents. This contention is reiterated in the reply affidavit also. But, counsel for the respondents, based on the pleadings in the counter affidavit would submit that the delay was on account of lapses committed by the petitioner in the due discharge of her official duty and therefore an enquiry became necessary to ascertain the correct position. It is contended that the delay was not culpable. Counsel further submits that this Court has granted reliefs to the petitioner not on the basis of any finding that the Housing Board did not sustain pecuniary loss by the alleged lapses committed by the petitioner, but only on the ground of non-completion of the proceedings against her within 3 months.

9. I think, these are matters to be adjudicated by a civil court in case the petitioner files a suit

claiming interest for the delayed payment of D.C.R.G. etc. (See ***V. Vijayakumaran Nair*** v. ***State Bank of Travancore & Another*** {2005 (1) KLJ 547}. Without prejudice to that right of the petitioner, this writ petition is disposed of, with the above directions.

K.K. DENESAN
JUDGE

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